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Re Russell Cave Water District

Intervenor: Lexington Water Company
Case No. 4344
Kentucky Public Service Commission
January 26, 1966

APPLICATION of water district for certificate, bond authority, and rate tariff orders; denied.

1. Monopoly and competition, §8 -- Commission duty -- Authority to serve.

The commission has jurisdiction to decide who shall serve a territory, where both a water district and a water company have a legal right to serve,

2. Monopoly and competition, §38 -- Service and rate factors.

A water district was denied a certificate where the cost of facilities to serve the area were much higher than those of an adjacent water company, the proposed facilities would be inadequate and would duplicate existing facilities, among other reasons,

3. Monopoly and competition, §38 -- Rate proposals -- Reasons for denial.

A water district was denied a certificate where charges were 302 per cent higher than those of an adjacent water company, among other reasons,

4. Monopoly and competition, §38 -- Efficiency of service.

A water district was denied a certificate where, among other reasons, an adjacent water company had a multiple source of main connections, more adequately trained personnel, and a more adequate degree of fire protection,

5. Certificates, §89 -- Rate proposals -- Discrimination.

A water district was denied a certificate where, among other reasons, a developer connection service charge would be discriminatory as against existing customers,

APPEARANCES: Honorable Tom R. Underwood, Jr., Attorney for Russell Cave Water District; Honorable C. Gibson Downing, Attorney for Lexington Water Company; Honorable John R. Cook., Jr., Attorney for the city of Lexington; and Honorable J. Gardner Ashcraft, Counsel for the commission.

By the COMMISSION:

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On the 8th day of July, 1965, the applicant, Russell Cave Water District, filed its application with the commission wherein it sought a certificate of public convenience and necessity from the commission to construct certain facilities to serve certain subdivisions now being developed and presently within the corporate limits of the city of Lexington, Kentucky.

On the 28th day of July, 1965, the Lexington Water Company, engaged in the business of rendering water service to the city of Lexington and surrounding areas in Fayette county, filed its motion for leave to intervene together with its answer. The motion by the Lexington Water Company to intervene was sustained by the commission and amendments thereto were duly filed.

It appears that both the applicant, Russell Cave Water District, and the intervenor, Lexington Water Company, each have a legal right to serve the territory in question under the authority of [City of Cold Springs v Campbell County Water Dist. \(Ky Ct App 1960\) 334 SW2d 269](#). It is the duty of the public service commission to decide who shall serve the territory in controversy.

This matter was set for hearing and hearings were held in the commission's offices in Frankfort, Kentucky, on the 13th and 14th days of October, 1965.

The Lexington Water Company contends that it should serve this territory and that the application should be denied. It contends that it can serve the area in controversy as an extension of its present system in the ordinary course of business and a certificate would therefore not be necessary. It further contends that the proposed facilities of the water district will compete directly with the existing facilities of the Lexington Water Company. The Lexington Water Company further contends that the rates to be charged by the district will be far in excess of the rates presently charged and to be charged by the Lexington Water Company, and that the cost of construction of the necessary facilities to serve the area in question would be far less if served by the Lexington Water Company than the cost required to be expended by the district; that the proposed service of the Lexington Water Company would be superior in quality than the proposed service of the district.

The commission having considered all the evidence of record is of the opinion and finds as follows:

[1] 1. That both the applicant, Russell Cave Water District, and the intervenor, Lexington Water Company, each have a legal right to serve the area in question.

2. That the public service commission under the authority of [City of Cold Springs v Campbell County Water Dist. \(Ky Ct App 1960\) 334 SW2d 269](#), has jurisdiction to decide which of the two utilities shall render the service.

[2] 3. That the cost of facilities necessary to render service by the applicant is in considerable excess of that required by the Lexington Water Company, in that the Lexington Water Company's mains need be extended only approximately 200 and

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250 feet, and the elevated storage facilities are already existent to render sufficient flow and pressures for peak usage and fire protection while the applicant's plans to construct a 300,000-gallon elevated storage tank is a needless duplication of facilities, and which, according to testimony by the Assistant Fire Chief Glass of the Lexington Fire Department, would be inadequate to meet the full requirements for adequate fire protection.

[3] 4. While strict comparisons of rates should not be the sole criterion for the granting or denying of a certificate of convenience and necessity the commission, in passing, calls attention to the fact that the rates presently charged and to be charged by the applicant district are far in excess of those presently charged by the Lexington Water Company which shows an average cost for 360 customers on the district rates of \$27,388.80 compared to an average cost on the Lexington Water Company rates of \$9,072 or 302 percent of the Lexington Water Company rates.

[4] 5. That the Lexington Water Company can provide a quality of service superior to that that can be supplied by the district because of a larger and more adequately trained personnel and multiple source of main connections, and further a more adequate degree of fire protection.

[5] 6. That the district, in their agreement with the developers, have ignored their own resolution of June 17, 1958, in which it set forth a minimum of \$75 for a connection fee, and have discriminated against the existing customers of the district by proposing preferential treatment to the subdivision developers in that the contract with the developers sets out a \$10 connection fee. 7. That in denying the district a certificate of convenience and necessity will not impair its ability to meet its operating expenses and service its debt.

For the aforesaid reasons it is ordered that the application of the Russell Cave Water District be and the same hereby is dismissed.

It is *further ordered* that the Lexington Water Company proceed forthwith to construct the necessary facilities to serve the area in question.

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